



Defining Liberty

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Here's something we can all agree on. Liberty is a wonderful thing. The American Constitution says so, right in the Preamble: The Framers established the Constitution to "secure the Blessings of Liberty." So, why doesn't that offer a clear answer to most of the constitutional questions that face America today? Aren't lawmakers, who swear to uphold the Constitution, obliged by their oaths to vote for liberty?

The problem is that liberty, like equality or justice, is a complicated idea that means different things to different people. Consider, for instance, one simple question: Whom do we want liberty from?

Well, we want liberty from a tyrannical government. That's why we have a Bill of Rights, and that's why the Constitution was designed to impose powerful constraints on the federal government (and, eventually, state governments).

But we also want liberty from foreign tyrants, right? What's the point of having a government that won't oppress us, if it can't protect us from foreign invaders who would oppress us even more? That's why the Preamble also says the Constitution is set up to "provide for the common defense."

Yet to protect ourselves against foreign tyranny, we may need to restrict domestic liberty. At the very least, the government has to impose taxes to pay for the military. Throughout American history, the government has also been seen as having the power to draft men to fight in wars; that's certainly a restriction on individual liberty. But it's long been seen as consistent with the Constitution.

We can see other examples, too. The Fourth Amendment bans "unreasonable searches and seizures." That's a powerful protection for liberty. But it doesn't ban all searches and seizures; reasonable ones are allowed. That's in part so the law can better protect us from criminals intruding on our liberty.

Likewise, the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." But that means that sometimes your property can be taken for public use with compensation, however much this limits your liberty to, say, continue living in your family house that has been condemned to make room for a highway. Sometimes liberty does yield to public benefit.

What's more, everyone agrees that my liberty doesn't extend to violating your rights. But where do my rights stop and yours start? The Constitution itself doesn't tell us, since it lists pretty

much just those rights that are protected against government intrusion like the free exercise of religion. People disagree about what rights should be protected from supposed intrusion by others—for instance, by employers, or by large businesses that might try to stifle competition.

So, what do we do about this? How do we resolve all these hard questions about liberty?

First, the Framers of the Constitution explicitly protected certain liberties, such as the freedom of speech and the right to keep and bear arms.

Second, the Framers gave the courts a major role in defining the scope of those liberties.

Third, the Framers set up the structures of government—such as separation of powers—that would help protect liberty, by making sure that no single branch of government could unduly restrict liberty.

But then, fourth, they left the rest of the debate about liberty to the political process. Indeed, even the gravest violation of basic natural liberty in American history—slavery—was ultimately abolished by the political process, as well as of course by the Civil War, which was started and conducted by elected officials.

The Framers also believed that most decisions in people's lives would not and should not be made by the government. They should be made by ordinary people: which job to take, which business to start, whom to associate with, how much to sell or buy things for, and innumerable other choices.

The American experience has been that we are, on balance, richer, safer, and freer when those decisions are made outside the government by individuals pursuing their own dreams and their own self-interest.

But when it came to most tough questions about what restrictions on liberty are necessary—outside those walled off by the Constitution—the Framers left those questions to be decided by the democratic process.

It's my view that the government should generally impose as few restrictions as possible, whether on people's personal lives or their economic lives. Others disagree. Should we have smaller government? Should we have bigger government? Ultimately, in the system the Framers created, these disagreements would have to be resolved by We the people.

To implement your vision of liberty, you have to win elections. And that's exactly what the Framers intended.

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